

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.06.2018
CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.1370 to 1372 of 2017
and
C.M.P.Nos.18840 to 18842 of 2017

W.A.No.1370 of 2017:

The Government of India
rep.by its Secretary,
Department of Heavy Industries,
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi-110 011. Appellant

-vs-

- 1.M/s.Hindustan Photo Film Workers Welfare Centre,
(CITU) - Reg.No.31/NLG
rep.by its Secretary,
Indunagar Township, Ootacamund,
The Nilgiris-643 005.
- 2.M/s.Hindustan Photo Films Manufacturing Co.Ltd.,
rep.by its Chairman & Managing Director,
Indu Nagar, Udhagamandalam,
The Nilgiris. Respondents

W.A.No.1371 of 2017:

The Government of India
rep.by its Secretary, सत्यमेव जयते
Department of Heavy Industries,
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi-110 011. ... Appellant

-vs-

- 1.M/s.Film Factory Workers Union
(affiliated to INTUC),
rep.by its General Secretary Mr.H.Radhakrishnan,
No.24, Temporary Colony,
Indunagar Township, Ootacamund,
The Nilgiris-643 005.

2.M/s.Hindustan Photo Films Ltd.,
rep.by its Chairman & Managing Director,
Indu Nagar, Udhagamandalam,
The Nilgiris.

... Respondents

W.A.No.1372 of 2017:

The Government of India
rep.by its Secretary,
Department of Heavy Industries,
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi-110 011.

... Appellant

-vs-

1.M/s.Anna Indu Employees Progressive Union,
affiliated to Anna Thozhichanga Perarai
rep.by its General Secretary,
Cheemaraj, Indunagar Township
Ootacamund,
The Nilgiris-643 005.

2.M/s.Indu Employees Progressive Union
Mr.A.Solomon Mahaveerar
Indunagar Township
Ootacamund,
The Nilgiris-643 005.

3.M/s.HPF Staff Union,
rep.by its General Secretary
Mr.N.Balakrishnan
Indunagar
Ootacamund,
The Nilgiris-643 005.

4.M/s.Photo Film Officers Association
rep.by its President,
Mr.K.Raghunathan
Ootacamund,
The Nilgiris-643 005.

5.M/s.Hindustan Photo Films Ltd.,
rep.by its Chairman & Managing Director,
Indu Nagar, Udhagamandalam,
The Nilgiris.

... Respondents

W.A.No.1370 of 2017 filed under Clause 15 of Letters
Patent, against the order passed by this Court in W.P.No.24355
of 2013 dated 29.11.2016.

W.A.No.1371 of 2017 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.24460 of 2013 dated 29.11.2016.

W.A.No.1372 of 2017 filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.25491 of 2013 dated 29.11.2016.

W.P.No.24460/13 and 25491/2013: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the 2nd respondent pertaining to its impugned Circular bearing Reference No.PI/IR dated 31.7.2013 and quash the same.

W.P.No.24355 of 2013:

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Calling for the records relating to the Circular bearing No.Ref: P1/14/ 59/VRS dated 10.7.2013 read with Circular bearing No.Ref: P1/ IR dated 31.7.2013 issued by the 1st respondent herein quash the same and consequently direct the respondents to continue to make the payment of Special Performance Allowance and adjustable amount as per settlements dated 17.8.2009 and 25.4.2011 until changed by another negotiated settlement as per law including arrears from April 2013.

For Appellant :: Mr.R.Rajagopalan,
in all W.As. Addl.Solicitor General of India
for Dr.V.Venkatesan
For Respondents:: Ms.R.Vaigai, Sr.Counsel
in all W.As. for Mr.S.Anna Mathew

COMMON JUDGMENT

(Delivered by M.DHANDAPANI, J.)

The writ petitions in W.P.Nos.24460, 24355 and 25491 of 2013 have been filed by the respondents herein challenging the action of the appellant, whereby the amounts paid in the form of allowances, are sought to be adjusted against the terminal benefits payable to employees under a Voluntary Retirement Scheme formulated by the Hindustan Photo Films Manufacturing Co. Ltd. ("HPF" in short).

2.It is the assertion of the respondents that the adjustment of allowances is contrary to the terms of the settlements, arrived at between them with the management of HPF, from time to time, and, therefore, no adjustment can be made, as is sought to be attempted by the HPF, by taking recourse to the Circulars, dated 10.07.2013 and 31.7.2013.

3.The petitioners before the writ Court / respondents herein, were workers union representing various workmen of HPF. The workers union, which has filed W.P.No.24355 of 2013 represents 70 workmen, while the workmen union, which has filed W.P.No.25491 of 2013, represents 547 workmen; likewise the workers union, which has filed W.P.No.24460 of 2013, represents 138 workmen. Therefore, in all, approximately, 755 workmen represented before this Court, via their respective Unions.

4.For the record, it may be noted that on account of the continued loss that HPF suffered, its net worth got completely eroded and consequently, based on a reference filed by HPF under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short SICA), it was declared as a Sick Industrial Company. The record shows that the reference was filed. HPF issued a circular calling upon its employees to apply for voluntary retirement under its VRS Scheme by 10.12.2012. VRS was made available to workmen by HPF via circulars issued, from time to time, whereby, many workmen have opted and exited HPF.

5.The contention of the respondents herein before the writ Court was that terminal benefits paid under the earlier Schemes were not subject to adjustment in respect of allowances paid in the interregnum.

6.The learned senior counsel, Ms.R.Vaigai, appearing for the respondents herein, submitted before the writ Court that when allowances are paid to the employees in furtherance of the settlements arrived at under Sections 12(3) and 18(1) of the Industrial Disputes Act, adjustments, if any, can only be made in accordance with the terms contained in the said settlements. She also submitted that the settlements arrived at in the instant case provide that the adjustment of allowances paid would not be made against the terminal benefits payable under the VRS scheme. Further, as per the terms of the settlements, adjustment of allowances could only be made against the arrears of wage/pay revision. It was also submitted that the terms of the settlement were sacrosanct and, would continue to bind the parties, even after the expiry of the period, if any, fixed under the settlement. In support of her submissions, Ms.R.Vaigai, relied upon the following judgments of the Hon'ble Supreme Court:

a) LIC V. D.J.Bahadur & Others - 1981(1) SCC 315

b) M/s.Tata Iron and Steel Co. Ltd. V. The workmen and others - 1972 (2) SCC 383.

7.Mr.G.Rajagopal, learned Additional Solicitor General of India, appearing for the appellant, submitted before the writ

Court that all advances and allowances were paid by HPF, in violation of the Department of Public Enterprises Guidelines and without the approval of the Government of India, Department of Heavy Industry. In sum, the learned Additional Solicitor General submitted that the impugned circulars were issued on account of the fact that they did not have the approval of Department of Heavy Industry.

8. Having heard the learned counsel for the parties, the learned single Judge has passed an elaborate order quashing the circulars impugned therein and also recording the submission of the learned Additional Solicitor General of India that the Government of India will release the requisite funds shortly to HPF for onward payment to those workmen, who have opted for VRS, by order dated 29.11.2016.

9. Challenging the said common order, the present appeals have been filed.

10. The learned Additional Solicitor General of India appearing for the appellant in these appeals and the learned Senior counsel appearing for the respondents herein have made their arguments in line with the arguments made before the writ Court.

11. Heard the learned counsel on either side and perused the materials available on record.

12. After considering the case in detail, the learned single Judge has rejected the contention of the learned Additional Solicitor General that Government of India/Department of Heavy Industry, that all these years, they were unaware of the fact that settlements had been arrived at with its workmen by the management of HPF; secondly, even assuming that the Government was unaware of the settlement, it could have no impact on the settlements, as these were settlements executed between the employees and their employer, i.e., HPF.

13. Even though it has been submitted by the learned Additional Solicitor General of India that the impugned circulars were issued on account of the fact that they did not have the approval of Department of Heavy Industry, the learned senior counsel appearing on behalf of the respondents has brought to our attention that the Cabinet Committee on Economic Affairs has approved the proposal for providing non-plan budgetary support of Rs.181.54 crores for VRS at 2007 notional pay scales as one time relaxation of DPE Guidelines for all employees of Hindustan Photo Films Mfg.Co.Ltd.(HPF), Udhagamandalam (Tamil Nadu).

14. As per the law laid down by the Hon'ble Supreme Court in its judgment in LIC V. D.J.Bahadur & Others reported in 1981(1) SCC 315, we have to only say that the settlements, as has been correctly submitted by Ms.R.Vaigai, will operate even beyond the tenure of the settlement, as in law, there cannot be a vacuum. A settlement can only be replaced and/or substituted by another negotiated settlement. Further, as submitted by the learned

senior counsel appearing for the respondents, the Cabinet Committee on Economic Affairs has approved the proposal for providing non-plan budgetary support of Rs.181.54 crores for VRS at 2007 notional pay scales as one time relaxation of DPE Guidelines for all employees of Hindustan Photo Films Mfg.Co.Ltd.(HPF), Udhagamandalam (Tamil Nadu).

15.In view of the above stated circumstances, we hereby dismiss these writ appeals with a direction to the appellant to pay the withheld amounts to the employees in question, within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently the connected miscellaneous petitions are closed.

16.At this juncture, it has been brought to the notice of this Court that some of the employees who were parties to the settlement, had expired and for those employees, even their legal heirs have not been brought on record. But since the settlement has been arrived at including those persons, they have to be given the benefit. In this connection, it is made clear that the benefits accrued in the settlement, has to be made available to the family members of the deceased employees by making proportionate calculation.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

KM

To

The Secretary to Government,
Government of India
Department of Heavy Industries,
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi-110 011.

+6cc to Mr.Anna Mathew, Advocate SR.No.39049

+1cc to Dr.V.Venkatesan, SCGSC Advocate SR.No.39060

W.A.Nos.1370 to 1372 of 2017
and C.M.P.Nos.18840 to 18842
of 2017

GN(28/06/2018)